

Hastings et al.

S/N: 10/711,745

ELECTION

Applicant elects, with traverse, what the Examiner has characterized as "Invention I", deemed drawn to a current monitoring system, and corresponding to claims 1-22 and 31-45. Applicant further elects, with traverse, what the Examiner has characterized as "Species A" of Fig. 1, and corresponding to claims 1-22 and 31-45 readable thereon.

REMARKS

The Examiner has identified two inventions in the pending claims. The Examiner's classification of the inventions include Group I consisting of claims 1-22 and 31-45 drawn to a current monitoring system, and classified by the Examiner in class 324, subclass 117H, and Group II consisting of claims 23-30 drawn to a method for determining current flow through an electrical path, and classified by the Examiner in class 324, subclass 117r.

The Examiner restricted Inventions I and II under MPEP §806.05(h) as product and process of use. MPEP §806.05(h) states that the "burden is on the examiner to provide an example, but the example need not be documented." While Inventions I and II can be shown to be distinct if "the product as claimed can be used in a materially different process" (Id.), the Examiner stated that "the apparatus of group I can be practiced with different method steps other than the method steps of group II." Office Action, p. 2. However, Applicant is unsure what "different method steps" the Examiner is referring to? Merely stating that the product can be practiced with a process other than the process of use does not provide an example of such a process. As such, the restriction as set forth in the Office Action has not been satisfied, and the burden has not shifted to Applicant.

MPEP §806.05(h) further states that "[i]f the applicant either proves or provides a convincing argument that the alternative use suggested by the examiner cannot be accomplished, the burden is on the examiner to support a viable alternative use or withdraw the requirement." However, the Examiner has provided no example of an alternative use to which the Applicant can respond. It is not possible for Applicant to prove or provide a convincing argument that the alternative use suggested by the examiner cannot be accomplished if the Examiner has not provided the alternative use.

Therefore, while Applicant has elected Invention I to satisfactorily and completely respond to the Examiner's Office Action, the restriction of Inventions I and II cannot stand and

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must be withdrawn because the Examiner has failed to identify an alternative use as required by MPEP §806.05(h).

The Examiner, however, has further required an election of species if Invention I is elected. Therefore, even though the restriction above fails to satisfy the Examiner's burden, Applicant nevertheless has elected the "species" of Fig. 1 to completely respond to the Office Action. The Examiner stated that "[c]urrently, it appears that no claim is generic." Office Action, p. 3. Applicant respectfully disagrees.

A generic claim reads on each species illustrated in a patent application. See MPEP §806.04(d). Claims 1, 12, 31, and 45 read on each of the species as identified by the Examiner and, as such, are each generic.

Therefore, while the Examiner has required an election of species, an election of "Species A," as identified by the Examiner, includes claims 1-22 and 31-45, which read thereon.

For all these reasons, Applicant respectfully requests rejoinder of all claims, of each group. The Examiner is invited to call the undersigned to discuss this Election or any other matters regarding this application to further prosecution.

Respectfully submitted,



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